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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

THE IDAHO PRESS CLUB, INC.

Petitioner,

vs.

ADA COUNTY,

Respondent.

Case No. CV01-19-16277

**VERIFIED PETITION TO
COMPEL DISCLOSURE OF
PUBLIC RECORDS,
APPLICATION FOR ORDER TO
SHOW CAUSE AND A REQUEST
FOR A DECLARATORY
JUDGMENT**

“Our liberty depends on the freedom of the press, and that cannot be limited without being lost.” - Thomas Jefferson (1786).

A vibrant and free press is critical to sustaining the rule of law and is indispensable for people to be informed and to participate in a democracy. By denying and obstructing the access of the press to its public records, Ada County and its agents are thwarting the very purpose of the Idaho Public Records Act: to provide an open and transparent government.

Petitioner Idaho Press Club, Inc. (“Idaho Press Club”) petitions the Court for an order

compelling Respondent Ada County to make certain records available for public inspection, under the Idaho Public Records Act, Idaho Code § 74-101 *et seq.* (“the Act”) and for other declaratory relief. A Memorandum in Support of the Petitioner for an Order to Compel has been filed contemporaneously with this Petition. As set forth in Idaho Code § 74-115(1), the time for responsive pleadings and for a hearing shall be set by the Court at the earliest possible time, and in no event beyond 28 calendar days from the date of filing, or on or before October 1, 2019.

THE PARTIES

1. Petitioner, the Idaho Press Club, is an Idaho non-profit corporation serving as a statewide association of working journalists from all facets of the media. Its mission is to promote excellence in journalism, freedom of expression, and freedom of information. For decades it has fought for open records and all aspects of freedom of the press, in the courts, in the legislature and in the public arena. Cynthia Sewell, Melissa Davlin, Jennifer Swindell and Katy Moeller are all Idaho journalists and members of the Idaho Press Club. The Idaho Press Club brings this action on their behalf and on behalf of its other members.

2. Respondent Ada County is a public and local agency within the meaning of the Idaho Public Records Act, Idaho Code § 74-101(8) and (11).

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to Idaho Code § 74-115.

4. Venue is proper in Ada County, Idaho, pursuant to Idaho Code § 74-115 as the records sought are located in Ada County.

GENERAL ALLEGATIONS

5. This Petition seeks an order to compel the release of public records arising from four recent and separate public records requests made to Ada County by members of the Idaho Press Club. A challenge in district court is the sole remedy for persons aggrieved under the Act for the denial of a record request. Idaho Code § 74-115(1). All public records are presumed open at all reasonable times for inspection except as otherwise provided by statute. Idaho Code § 74-102(1). As set forth below, Ada County's responses were unlawful under the Act. These deficiencies include the fact that public record requests were wrongfully denied, and the content of numerous public documents were redacted and deemed exempt under the Act when no exemption was demonstrated to apply to them. Further, some of the responses were provided far beyond the time period proscribed by the Act, and Ada County has misapplied and hidden from the public the fee waiver provisions of the Act and failed to explain the fees it imposes in connection with its public record request responses.

The Sewell Public Records Request

6. On February 15, 2019, Cynthia Sewell, a member of the Idaho Press Club and a reporter with the Idaho Statesman, made a public records request of the Ada County Commissioners, requesting: "Any correspondence or documents pertaining to the lease of or purchase of Les Bois race track. This request includes Expo Idaho and Ada County Board of Commissioners documents. The time period of this request is July 1, 2018 to present." This public records request will be referred to as the Sewell Request.

7. Under Idaho Code §74-103(1), a public agency has within three working days from the date of receipt of the request to grant or deny the request. If more time is needed, the agency must notify the requester in writing it requires an extension to respond. But in any event,

the Act requires that it provide the documents no later than ten working days following the person's request.

8. Judy Morris, an employee of the Ada County Commission notified Ms. Sewell via email it would require the full ten days to respond to the Sewell Request.

9. On April 3, 2019, Ms. Morris emailed Ms. Sewell and stated "We [the Ada County Commissioners] still believe that we are in compliance with Idaho law..." although the response had been due over a month earlier on March 1, 2019. A copy of this response is attached as Exhibit A.

10. Ada County responded on April 5, 2019, stating it would charge \$695.31 to gather and review the documents responsive to this request. A copy of this response is attached as Exhibit B. Ada County indicated it would charge \$50.00 an hour for I.T. personnel to search and locate the emails, and \$42.14 an hour for attorney time to review them.

11. Ada County sent its substantive response to Ms. Sewell on April 11, 2019. It reduced the fee by 25%, to \$521.48, and noted "However, please be aware that this does not change our procedures or how we handle public records requests going forward." Ada County also indicated that Ms. Sewell had 180 calendar days from the date of this letter to file a petition challenging this denial under the Act. A copy of this response is attached as Exhibit C.

12. The Act provides that fees charged shall not exceed reasonable labor costs necessarily incurred in responding to a public records request. Idaho Code § 74-102(10)(e). Further, under the Act, fees charged for labor costs shall be charged at the per hour pay rate of the lowest paid administrative staff employee who is necessary and qualified to process the request. If the request requires redactions be made by an attorney, again the rate of the lowest paid attorney shall apply.

13. On July 23, 2019 Ms. Sewell requested a fee waiver under Idaho Code § 74-102(10)(f), stating she met the criteria for a waiver under the Act because this information is sought with the Idaho Statesman’s quest to serve the public interest and to report and monitor the activities of government and because the Statesman newsroom budget does not provide for paying such high fees. A copy of this response is attached as Exhibit D.

14. Ms. Sewell also requested that if the fee waiver was not granted, Ada County provide a more specific breakdown of the rates/time estimated/staff person responsible for incurring the time as required by Idaho Code §74-102 (10)(e).

15. On July 26, 2019, in a letter signed by all three Commissioners, Ada County responded that it would grant a “**one-time waiver**” (bold in original) and a fee waiver will not be considered in the future with any media or other Public Records Requests that don’t meet all three criteria of Idaho Code §74-102(10)(f). The Ada County Commission did not elaborate on which of the criteria it believed had not been met by Ms. Sewell. A copy of this response is attached as Exhibit E.

16. Ada County also failed to provide a more specific breakdown of the rates/time estimated/staff person responsible for incurring the time as required by Idaho Code §74-102 (10)(e) and as requested by Ms. Sewell.

17. The Ada County Commissioners Office’s website erroneously informs the public that: “Pursuant to Idaho State Code § 74-102(10), *all requests are subject to a copy and/or processing fee* which may be required prior to processing of record(s).” (italics added). See: <https://adacounty.id.gov/about-ada-county/public-records-request/> This assertion is inaccurate. Under the Act, “no fee shall be charged for the first two (2) hours of labor in responding to a request for public records, or for copying the first one hundred (100) pages of paper records that

are requested.” Idaho Code §74-102(10)(a). Ada County also does not disclose to the public that they may be legally entitled to a waiver of all costs or fees under Idaho Code § 74-102(10)(f).

18. On August 13, 2019, Elizabeth C. Duncan, the Ada County Communications Manager phoned Ms. Sewell to inform her that “a lot” of the pages response to her request would be redacted in their entirety. Ms. Sewell indicated she still wanted them and asked her to explain the reason for the redactions.

19. The Communications Manager emailed her reply and stated: “To Clarify, the redactions are Attorney-Client Privilege, Personnel Information, Privacy, and Deliberative Process Privilege information.” A copy of this email is attached as Exhibit F.

20. On August 26, 2019, Ada County finally released some documents responsive to her February 15, 2019 request. This 511 page response is heavily redacted. Ada County bases these redactions on its assertion of attorney-client privilege, personnel information, a generalized claim of “privacy”, and the deliberative process privilege.

21. This challenge to the Sewell Request is timely, as it was brought within 180 days of the response, as required by Idaho Code § 74-115.

22. The Court should issue a declaratory judgement requiring Ada County to comply with the mandatory response time under the Act and the fee waiver criteria set forth in Idaho Code § 74-102(10), to demonstrate the basis for the rates its charges to respond to public records requests and to properly inform the public of the Act’s provisions for fee waivers on its website.

23. Further, the Court should compel the Respondent to produce the documents in unredacted form or require Respondent to submit them to the Court for an *in camera* inspection, to demonstrate that each and every one of the redacted documents is in fact privileged under the Act, and compel the release of all nonexempt portions documents in an unredacted form, along

with a privileged index setting forth the parties to the communication, and the date, the subject matter of the document, the specific privilege covering the redaction if, in fact, privileged documents are found to be responsive to the request.

The Davlin Public Records Request

24. On April 8, 2019 Melissa Davlin, a reporter for Idaho Public Television and a member of the Idaho Press Club, made a public records request of the Ada County Commissioners, requesting “access to and a copy of any and all written communications, including, but not limited to, e-mails and text messages, regarding the submission and pending fulfillment of Cynthia Sewell’s Feb. 15th public records request regarding Les Bois race track. This request includes any communications between you, the IT department, the commissioners’ office staff, and the county commissioners...”. A copy of this request and a letter from Ms. Davlin’s expressing the Idaho Press Club’s serious concerns about Ada County’s handling of Ms. Sewell’s recent public records request is attached as Exhibit H. This public records request will be referred to as the Davlin Request.

25. Judy Morris, an employee of the Ada County Commission notified Ms. Davlin Ada County would require the full ten working days to respond to the second request and require payment of \$42.00. On April 26, 2019, she indicated the Davlin Request was granted in part and denied in part. A copy of that response is attached as Exhibit I.

26. The County produced documents it identified as “DAVLIN RESPONSE-ADA COUNTY 000023-000195” and redacted the content of the majority of the 172 pages in their entirety. The County asserted: “There is attorney work product and attorney-client communications which have been redacted from the documents produced. Idaho decisional law, rules, statutes (e.g. Idaho Code § 74-104(1)), and the Idaho State Bar’s Rules of Professional

Conduct protect information of this nature from public dissemination.” Ada County redacted ninety six pages of its response completely, and another twelve pages were partially redacted. The documents that were disclosed are primarily multiple duplicate copies of Ms. Davlin’s own public records request, and emails transmitting that request.

27. All public records are presumed open at all reasonable times for inspection except as otherwise provided by statute under Idaho Code §74-102(1). The Idaho Supreme Court has narrowly construed these exceptions to disclosure. *Wade v. Taylor*, 156 Idaho 91, 97, 320 P.3d 1250, 1256 (2014).

28. As set forth in the Memorandum in Support of the Order to Compel, filed contemporaneously with this Petition, neither Idaho Code § 74-104(1), or unspecified “underlying case law” or unnamed “rules” create a sweeping attorney work product and attorney-client exemption under the Idaho Public Records Act. Likewise, there is no blanket exemption for “personnel information,” “privacy,” or the “deliberative process privilege”.

29. Under Idaho law it is well established that the burden of showing that information is privileged, and therefore exempt from disclosure, is on the party asserting the privilege. Here Respondent has made *no showing* that the materials are in any way related to ongoing litigation, or contain the advice of counsel. Instead Ada County improperly redacted – in their entirety- ninety six pages of public documents in the Davlin response, without identifying even the attorney(s) involved, the parties to the communications, the date of communication or the general subject matter discussed.

30. Ada County’s response to the Davlin Request did not provide any information to evaluate the privilege and left Ms. Davlin without any way of knowing what was withheld or information to judge whether that claim was justified. The Sewell response was equally sweeping

and vague.

31. The Respondent cannot meet its heavy burden to show that these many documents fall within the Public Records Act exemptions it has cited, and it has failed to demonstrate, *in any manner whatsoever*, that the public records requested in the Davlin or Sewell Requests are exempt from disclosure.

32. This challenge to the Davlin Request is timely, as it was brought within 180 days of the response, as required by Idaho Code § 74-115.

33. Accordingly, the Court should compel the Respondent to produce the documents in unredacted form or require Respondent to submit them to the Court for an *in camera* inspection, to demonstrate that each and every one of the redacted documents is in fact privileged, and compel the release of all nonexempt portions of the documents in an unredacted form, along with a privileged index setting forth the parties to the communication, and the date, the subject matter of the document, the specific privilege covering the redaction if, in fact, privileged documents are found to be responsive to the request.

The Swindell Public Records Request

34. On July 11, 2019 Jennifer Swindell, the editor of the Idaho Education News and a member of the Idaho Press Club, made a public records request of the Ada County Commissioners, stating: “I am requesting copies of all public records requests made of Ada County in 2019. I also am requesting copies of all responses from Ada County to those public records requests. I do not need the actual record that were requested. I only want the requests and the county's responses.” This public records request will be referred to hereafter as the Swindell Request.

35. On July 25, 2019 Elizabeth Duncan, the Ada County Communications Manager

responded to Ms. Swindell's public records request, and produced documents responsive to the request, but redacted the addresses, phone numbers and emails of all the persons who made the public records requests in their individual capacity, with no citation to the authority to do so under the Act. A copy of this response is attached as Exhibit J.

36. Ada County deemed that personal contact information of persons who made public records requests in their individual capacity was exempt from disclosure and therefore redacted, but not requests made by persons in their professional or business capacities.

37. Nowhere does the Act provide that the contact information of individuals who make public records requests are exempt and therefore subject to redaction or nondisclosure.

38. This challenge to the Swindell Request is timely, as it was brought within 180 days of the response, as required by Idaho Code § 74-115.

39. Accordingly the Court should compel the Respondent to produce the documents in unredacted form. These arbitrary and capricious redactions have no basis in the Act and the Court should compel the release of the documents responsive to the Swindell Request.

The Moeller Public Record Request

40. On August 1, 2019 Katy Moeller, a reporter for the Idaho Statesman, and a member of the Idaho Press Club, made a public records request of the Ada County Sheriff's Office, requesting a recording of the 911 calls reporting two injuries sustained in a scooter accident in downtown Boise on Friday, July 26, 2019. Ms. Moeller was informed by the Boise City Police Department that no law enforcement investigation is on-going concerning these accidents.

41. On August 1, 2019 Patrick Orr, an employee of Ada County who is the Ada County Sheriff's spokesman, responded to Ms. Moeller's public records request via both

voicemail and email and denied it. He asserted that Ms. Moeller would have to get authorization from the individuals who placed the 911 calls concerning the accidents before Ada County could release these records under the Idaho Public Records Act. A copy of the email exchange is attached as Exhibit K.

42. Nowhere does the Act provide that 911 calls are exempt except with the express permission of the caller and therefore not to be disclosed as public records. In fact, 911 recordings are routinely provided in response to public records requests, unless an express exemption otherwise applies to them, such as a pending law enforcement investigation.

43. This challenge to the Moeller Request is timely, as it was brought within 180 days of the response, as required by Idaho Code § 74-115.

44. Accordingly the Court should compel the Respondent to produce the recordings in unredacted form. This arbitrary and capricious denial has no basis in the Act and the Court should compel the release of the recordings responsive to the Moeller Request.

PRAYER FOR RELIEF

The Petitioner respectfully asks the Court for the following relief:

1. An order under Idaho Code § 74-116(1) that Respondent disclose all of the public records that Petitioner requested in an unredacted form or show cause why it should not do so, after the Court conducts an *in camera* inspection.

2. An order under Idaho Code § 74-116(2) that the Respondent disclose the records that Petitioner requested.

3. A declaratory judgement under Idaho Code § 10-1201 against Respondent Ada County requiring it to comply with the mandatory response timeframes to public record requests under Idaho Code § 74-103.

4. A declaratory judgement under Idaho Code § 10-1201 against Respondent Ada County requiring it to comply with the fee waiver criteria set forth in Idaho Code § 74-102(10), to demonstrate the basis for the rates its charges to respond to public records requests, and properly inform the public of the Act's provisions concerning fee waivers and what may be charged for record requests, including on its website.

5. A declaratory judgement under Idaho Code § 10-1201 against Respondent Ada County requiring that in the event it asserts its public documents are protected from disclosure under Idaho Code § 74-104(1), due to attorney client privilege, the work product doctrine, deliberative process or any other privilege related to legal representation, that it demonstrate its entitlement to the privilege by preparing a privilege log, or otherwise carry its heavy burden on non-disclosure.

6. Attorney fees and costs under the Idaho Public Records Act and all other applicable law, decision, or custom.

7. Civil penalties under Idaho Code §74-117 against any public official found to have improperly refused a request.

8. All other relief that the Court determines appropriate or that the interests of justice may require.

Respectfully submitted,

/s/ Deborah A. Ferguson

Deborah A. Ferguson

Craig H. Durham
Ferguson Durham PLLC

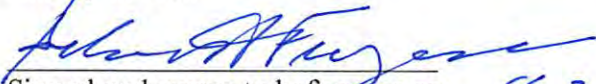
VERIFICATION

I, Cynthia Sewell verify that I have read the allegations contained in this Petition that pertain to my public records request, and that, other than allegations made upon information and belief, the allegations are true to the best of my knowledge, and I believe that the allegations made upon information and belief are true.


Cynthia Sewell

Dated: 8/29/2019

State of Idaho
County of Ada


Signed and sworn to before me on 8.29.2019

Notary Public for Idaho
My commission expires:




VERIFICATION

I, Melisa Davlin verify that I have read the allegations contained in this Petition that pertain to my public records request, and that, other than allegations made upon information and belief, the allegations are true to the best of my knowledge, and I believe that the allegations made upon information and belief are true.


Melissa Davlin

Dated: 8-27-19

State of Idaho
County of Ada


Signed and sworn to before me on 8-27-2019

Notary Public for Idaho
My commission expires:



VERIFICATION

I, Jennifer Swindell verify that I have read the allegations contained in this Petition that pertain to my public records request, and that, other than allegations made upon information and belief, the allegations are true to the best of my knowledge, and I believe that the allegations made upon information and belief are true.

Jennifer Swindell Dated: 8-27-2019
Jennifer Swindell

State of Idaho
County of Ada

[Signature]

Signed and sworn to before me on 8-27-2019

Notary Public for Idaho
My commission expires:



VERIFICATION

I, Katy Moeller verify that I have read the allegations contained in this Petition that pertain to my public records request, and that, other than allegations made upon information and belief, the allegations are true to the best of my knowledge, and I believe that the allegations made upon information and belief are true.

Katy Moeller Dated: Aug. 29, 2019
Katy Moeller

State of Idaho
County of Ada

[Signature]

Signed and sworn to before me on 8-29-2019

Notary Public for Idaho
My commission expires:

Exhibit A

From: Judy Morris
Sent: Wednesday, April 3, 2019 10:04 AM
To: Cynthia Sewell/Idaho Statesman
Subject: RE: [EXTERNAL] Re: Public Records Request re Le Bois Race Track

Cynthia:

We are sorry this is taking longer than normal. We still believe that we are in compliance with Idaho Law, and hope to get the records to you soon.

Judy Morris
Office Manager

From: Cynthia Sewell/Idaho Statesman [<mailto:csewell@idahostatesman.com>]
Sent: Wednesday, March 27, 2019 9:45 AM
To: Judy Morris
Subject: [EXTERNAL] Re: Public Records Request re Le Bois Race Track

Hello Judy,

Specifically, what is the problem in which Ada County is unable to legally comply with my public records request?

Under Idaho law, 74-103. " ... the public agency .. shall provide the public records to the person no later than ten (10) working days following the person's request."

My request was made on Feb. 15.

Thank you,

Cynthia Sewell

On Tue, Mar 19, 2019 at 4:50 PM Judy Morris <jamorris@adacounty.id.gov> wrote:

Please see attached.

Thank you.

Exhibit B



ADA COUNTY

COMMISSIONERS'
OFFICE
200 W. Front Street
Boise, Idaho 83702
(208) 287-7000
Fax: 287-7009
boccl@adaweb.net
www.adacounty.id.gov

April 5, 2019

Via Email: csewell@idahostatesman.com

Cynthia Sewell
Idaho Statesman
1200 N. Curtis Road
Boise, ID 83706

RE: Public Records Request

Dear Ms. Sewell:

Thank you for your request dated February 15, 2019. Your request asked for:

Any correspondence or documents pertaining to the lease of or purchase of Les Bois race track.

This request includes Expo Idaho and Ada County Board of Commissioners documents.

The time period of this request is July 1, 2018 to present.

Thank you for your patience as we have worked to compile your requested records. Due to a technological glitch, there was a delay in processing your request as we had to wait to recover from the incident before we could begin. We have now completed the search for your records. As you may know, the first two hours of labor are free. We have exhausted those two hours in compiling over 2,000 emails and it is expected to take an additional 16.5 hours to review the compiled records to determine what, if anything, is a public record that is responsive to your request.

Idaho law allows for state and local governments to collect labor costs when an employee is diverted from his or her regular job to conduct research on behalf of an individual requestor. This saves taxpayers from having to subsidize such searches. In this instance, Idaho Code § 74-102 allows that "no fee shall be charged for the first two hours of labor." Because this work will take over two hours, there will be costs involved.

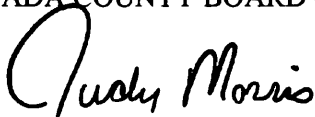
Cynthia Sewell
April 5, 2019
Page 2

After the first two hours of labor, we charge \$50.00 an hour for I.T. personnel to search and retrieve the emails, and \$42.14 an hour for attorney time to review the located emails. Because your request has already gone beyond the two free hours, payment for the anticipated 16.5 hours of labor is required. Please remit a check in the amount of \$695.31 (16.5 hrs x \$42.14) made payable to Ada County. See Idaho Code § 74-102. Once we receive your payment, we will begin reviewing the records

Pursuant to Idaho Code § 74-103(4), you are notified that attorneys from this agency have reviewed the request and the files.

Sincerely,

ADA COUNTY BOARD OF COMMISSIONERS

A handwritten signature in black ink that reads "Judy Morris". The signature is written in a cursive, flowing style.

Judy Morris, Office Manager

Exhibit C



ADA COUNTY

COMMISSIONERS'
OFFICE
200 W. Front Street
Boise, Idaho 83702
(208) 287-7000
Fax: 287-7009
boccl@adaweb.net
www.adacounty.id.gov

April 11, 2019

Via Email: csewell@idahostatesman.com

Cynthia Sewell
Idaho Statesman
1200 N. Curtis Road
Boise, ID 83706

RE: Public Records Request

Dear Ms. Sewell:

We apologize for the delay in responding to your public records request dated February 15, 2019. The Ada County Commissioners believe in an open and transparent government and strive to answer every public records request thoroughly and in a timely manner. As we indicated in multiple previous response letters to you regarding this request, because of the nature and expansiveness of your request, it took more than a simple review to respond to your query. We have looked into your complaint and found there were some coincidental glitches including a technical issue which significantly delayed our I.T. department's ability to conduct the search and promptly respond to your request. However, we believe the County's public records procedures comply with Idaho law and we will continue to charge requestors the hourly rate of our employee's time that is diverted from their normal duties in order to respond to public records requests.

Because you requested "[a]ny correspondence or documents," we included emails as part of our response. As background and so you are aware of the nature of such a search, which you may already be aware from your previous public records requests to Ada County, there are over 1,800 individuals, both county and state employees, utilizing the Ada County email system. The system sends and receives over 4,500 emails each working hour, amounting to about 36,000 emails a day, over 180,000 a week and 8.5 million emails sent and received each year. These emails are not automatically grouped by subject, so we must search for the specific emails you seek.

Because emails are not automatically grouped by subject, extracting and reviewing them involves significant time and labor costs. To gather emails that could be responsive to a request we must first divert an Ada County Information Technology (IT) employee from his or her normal duties to conduct the search. The employee has to determine who may have sent or received emails pertaining to the topic. Once the mailboxes are identified, all of the emails to those destinations must be segregated from the rest of the emails in the county system. The

number of emails is usually very high so the IT employee has to next determine search terms or key words likely to lead to the targeted emails. After the segregated emails are narrowed by search terms, an attorney must review each of the emails to ensure each is a public record and if so, whether it is subject to or exempt from public dissemination.

Approximately, 2,000 emails were captured and segregated using the keywords "Les Bois," "racetrack," "race track," "Les Bois racetrack lease," "Les Bois lease," and "Les Bois racetrack purchase." The search was conducted in the employee inboxes of the Ada County Board of Commissioners Office, Ada County Development Services Office, and Expo Idaho from July 1, 2018, to February 15, 2019. Now that the emails have been segregated, an attorney will need to review each captured email and any attachments to ensure the email and/or attachment is a public record. If it is a public record, it will be analyzed to determine whether it is exempt from disclosure, if it can be released in a redacted form, or if it can be released in its entirety.

As we stated in our April 5, 2019, letter, Idaho law allows for state and local governments to collect labor costs when an employee is diverted from his or her regular job to conduct research on behalf of an individual requestor. This saves taxpayers from having to subsidize these searches. Idaho Code § 74-102 allows that "no fee shall be charged for the first two hours of labor." As we stated in our April 5th letter, we believe it will take approximately 16.5 hours of attorney time to finish reviewing the records. We believe Ada County's current procedures in place for reviewing Public Records Requests and charging fees at the lowest standard employee's rate to complete the public records request and requiring pre-payment of these fees is in compliance with Idaho law.

In this situation, because there were unforeseen circumstances and technical issues which caused a delay in responding to your request, we have decided to reduce the fee by 25% to finish reviewing and redacting the records. Please remit a check made out to "Ada County" in the amount of \$521.48 ($\695.31×0.25) and we will begin reviewing the records. Any overage will be refunded to you should the review be done in less time. However, please be aware that this does not change our procedures or how we will handle public records requests going forward. The attorney will make review of these records a priority, but it will be done on top of their normal duties, so it might take a little time to complete. We will continue to communicate with you regarding the expected response time.

In addition, because Mr. Day has recently made a similar public records request, you may want to consult with him regarding sharing the costs.

Furthermore, Xavier Ward submitted a Public Records Request for "all emails pertaining to Les Bois Park sent since February 1, 2019." He later narrowed it down to just emails to and from the Commissioners. Due to the fact that it took less than two hours to review his request, we have included those records for your review. Additionally, enclosed are written communication records that respond to your request. Pursuant to Idaho Code § 74-104(1) and state and federal constitutional privacy protections, protected information from both sets of records have been redacted.

Cynthia Sewell
April 11, 2019
Page 3

Pursuant to Idaho Code § 74-103(4), you are notified that an attorney for this office has reviewed your request. To the extent you believe your requests have been denied, your sole remedy is to institute proceedings by filing a petition contesting this office's determination with the Ada County District Court to compel the office to make the requested information available for public inspection. You have 180 calendar days from the mailing of this notice to file that petition.

We hope this letter addresses your concerns. The current Board is always open to having a conversation with the media and answering any questions directly, so please don't hesitate to reach out to us with any questions or concerns.

Lastly, although Commissioner Visser is a signatory to this letter, he disagrees with allowing a reduction in price for the records and agrees with the remainder of the letter.

Sincerely,

ADA COUNTY BOARD OF COMMISSIONERS

A handwritten signature in blue ink, appearing to be "Kendra Kenyon", with a long horizontal flourish extending to the right.

Kendra Kenyon, Commissioner

A handwritten signature in blue ink, appearing to be "Diana Lachiondo", written in a cursive style.

Diana Lachiondo, Commissioner

A handwritten signature in blue ink, appearing to be "Rick Visser", written in a cursive style.

Rick Visser, Commissioner

cc: Don Day, Boise Dev
Melissa Davlin, Idaho Press Club

Exhibit D

----- Forwarded message -----

From: **Cynthia Sewell/Idaho Statesman** <csewell@idahostatesman.com>

Date: Tue, Jul 23, 2019 at 11:22 AM

Subject: Re: Public Records Response re Les Bois

To: Judy Morris <jamorris@adacounty.id.gov>, <bocc1@adacounty.id.gov>

Dear Commissioners Kenyon, Lachiondo and Visser,

In response to Ada County's April 5, 2019, letter notifying the Statesman it must pay \$695.31 to receive public records requested in the Statesman's Feb. 15, 2019, public records request and Ada County's subsequent April 11, 2019, letter reducing that public records fee amount to \$521.48, the Statesman is requesting Ada County waive all fees for this public records request.

In accordance with Idaho Code 74-102(10)(f):

"The public agency or independent public body corporate and politic shall not charge any cost or fee for copies or labor when the requester demonstrates that the requester's examination and/or copying of public records: (i) Is likely to contribute significantly to the public's understanding of the operations or activities of the government; Idaho Public Records Law Manual 26 (ii) Is not primarily in the individual interest of the requester including, but not limited to, the requester's interest in litigation in which the requester is or may become a party; and (iii) Will not occur if fees are charged because the requester has insufficient financial resources to pay such fees."

The Statesman is requesting Ada County waive all fees of this public records request as provided under state law because this information is sought with the Idaho Statesman's quest to serve the public interest and to report and monitor the activities of government and because the Statesman newsroom budget does not provide for paying such high fees.

If Ada County denies the fee waiver, can you please provide a more specific breakdown of the rates/time estimated/staff person responsible for incurring the time as required by Idaho Code 74-102 (10)(e): "Fees for labor costs shall be charged at the per hour pay rate of the lowest paid administrative staff employee..... who is necessary and qualified to process the request."

Thank you.

Cynthia Sewell
Idaho Statesman

On Thu, Apr 18, 2019 at 5:12 PM Judy Morris <jamorris@adacounty.id.gov> wrote:

Please see attached.

Exhibit E



ADA COUNTY

COMMISSIONERS'
OFFICE
200 W. Front Street
Boise, Idaho 83702
(208) 287-7000
Fax: 287-7009
boccl@adaweb.net
www.adacounty.id.gov

July 26, 2019

Via Email: csewell@idahostatesman.com

Cynthia Sewell
Idaho Statesman
1200 N. Curtis Road
Boise, ID 83706

RE: Request for Waiver of Fees for February, 15, 2019, Public Records Request

Dear Ms. Sewell:

We have reviewed your email dated July 23, 2019, requesting the county waive all fees for the Idaho Statesman's February 15, 2019, public records request.

Pursuant to Idaho Code § 74-102(10)(f), a waiver requires that the requestor for a fee waiver satisfy all three requirements set forth in (i), (ii) **and** (iii):

- (i) Is likely to contribute significantly to the public's understanding of the operations or activities of the government;
- (ii) Is not primarily in the individual interest of the requester including, but not limited to, the requester's interest in litigation in which the requester is or may become a party; **and**
- (iii) Will not occur if fees are charged because the requester has insufficient financial resources to pay such fees.

In consideration of this specific Public Records Request, however, and as a good faith gesture of the Board of Commissioners' commitment to timely answer Public Records Requests and maintaining transparency, we will agree to waive the fees on this particular occasion.

Please note, **this is a one-time waiver**, and will not be considered in the future with any media or other Public Records Requests that don't meet all three criteria of Idaho Code § 74-102(10)(f).

Cynthia Sewell
July 26, 2019
Page 2

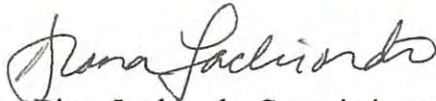
At attorney will begin reviewing the requested emails. We will provide those records to you as soon as that has been completed.

Sincerely,

ADA COUNTY BOARD OF COMMISSIONERS



Kendra Kenyon, Commissioner



Diana Lachiondo, Commissioner



Rick Visser, Commissioner

Exhibit F


Hi Cynthia,

Good talking to you this morning. We would be happy to send you the digital copies of all the pages that are part of your extensive public records request. To clarify, the redactions are Attorney-Client Privilege, Personnel Information, Privacy, and Deliberative Process Privilege information.

I'll keep you updated on when you'll be getting the information!

Best,

Elizabeth

cid:image001.png@01D2DED8.83C650
C0

Elizabeth C. Duncan

Communications Manager

Ada County

200 W. Front St., Boise, ID 83702

(208) 287-7008 office

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Cynthia Sewell

Watchdog/Politics Reporter

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